THE INTERNATIONAL STATUS OF THE GRAND DUCHY OF LUXEMBURG AND THE KINGDOM OF BELGIUM IN RELATION TO THE PRESENT EUROPEAN WAR.[a]

II.

THE case of Belgium presents an entirely different aspect both from the legal and the political point of view. While the guarantee of the neutrality of Luxemburg interests—or interested at the time of the signature of the Treaty of 1867—France and Prussia only, and the other contracting parties (and particularly Great Britain) acceded to it, to use the words of Lord Stanley, "reluctantly," that of Belgium had and has an entirely different character so far as England is concerned. It affects her vital interests, namely, her own security. Hence the difference in the wording of the instrument guaranteeing the independence and neutrality of Belgium, and the alarm felt in Great Britain whenever an attempt was made for the violation of the stipulations of the latter treaty.

The interest of the British nation in the sacro-sanctum, one might say, of the inviolability of the Belgian territory,—which has now been shown in such a palpable way, came very near the same point, as it is known, during the Franco-German war of 1870. The views then expressed by the public men of Great Britain and the stand then taken by the British Government are very instructive as having a direct connection with the present controversy—or rather the efforts of some friends of Germany to prove the obsolescence of the Treaty of 1839.

The reason for the conclusion of the treaty or treaties of 1870 above referred to, was given in both Houses of Parliament at that time, and the attitude of the British Government in regard to Belgium was clearly shown during the Parliamentary debates. But, in order to understand better the question, it might be necessary to refer to some previous incidents which influenced the minds of the British Ministers to resort to the conclusion of an additional treaty guaranteeing again the neutrality of Belgium.

In the course of the year 1870—namely, on July 25, 1870—the Times divulged the secret negotiations then going on between France and Prussia for the incorporation of Belgium to the French Empire.

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aContinued from March number.

ERRATUM—On page 369 of the March number insert "Prussia" after "Great Britain" in line 4 as one of the signatories of the treaty.

It seems that the King of Prussia had already acquiesced in gratifying the desire of Napoleon III. This intended infringement of the public law of Europe had provoked, as was natural, the anger of the English people and at the same time aroused the alarm of the British Government, the absorption of Belgium by either of the two Powers being considered as a menace to the security of Great Britain.

Therefore on the declaration of the war in 1870 this intrigue of the two belligerents was uppermost in the minds of the British Ministers, who, fearing that Belgium might (by the treaty of peace to be concluded after the termination of the hostilities), be incorporated to either France or Germany, proposed to both belligerents the conclusion of an additional treaty for the maintenance of the independence and neutrality of that country, without impairing the validity of that of 1839.[44] The proposal of the British Government received the approval of both Prussia and France and resulted in the compacts of 1870.

The debates in both Houses of Parliament in regard to these treaties are not only interesting, but throw a great deal of light as to British policy concerning the Belgian State.

Thus, Lord Granville, in explaining in the House of Lords, as a spokesman of the Government, on August 8, 1870, the reasons which prompted the cabinet to enter into a new treaty or treaties for the guarantee of the neutrality of Belgium, said: "We might have explained to the country and to foreign nations that we did not think this country was bound either morally or internationally or that its interests were concerned in the maintenance of the neutrality of Belgium. Though this course might have had some conveniences, though it might have been easy to adhere to it, though it might have saved us from some immediate danger, it is a course which Her Majesty's Government thought it impossible to adopt in the name of the country, with due regard to the country's honor and to the country's interests. Another course would have been that, maintaining our obligations such as they are described in the Treaty of 1839, we might have simply made a declaration of the determination of this country to resist any interference with the neutrality of Belgium by force of arms. Now in the first place, such a declaration would have been a direct menace to the Powers who are now

[44] On July 28, 1870, Prince Bismarck, then Count Bismarck, in trying to justify the attitude of Prussia on the secrecy of the negotiations for the incorporation of Belgium to France, said in his usual blunt way that he "kept the secret and treated the proposition in a dilatory manner" and that "it was no business of his to tell French secrets." John Morley, Life of Wm. E. Gladstone, vol. II, p. 342.

engaged in hostilities; in the second place it would have given an appearance of isolation to our policy; and in the third place I do not believe it was a course best calculated to prevent that particular event which we wish to avoid."

Lord Granville said that they had received the assurance from both belligerents that they would respect the treaty of 1839 but "we added," he continued, "that we thought there could not be a doubt of the duty of both those countries (France and Prussia) to maintain the obligations of the treaty (of 1839) which they had severally entered into in common with ourselves and with other countries but we had observed in the declaration of both that the promise was conditional on the other belligerent not violating it, and we could not help gathering from that, that, in the opinion of each, such an assurance was not of a complete character. We therefore proposed that if they wished to give a more patent proof to the world of their intention, or wished for a clearer assurance from us that we meant to maintain the independence of Belgium, we were ready either to enter into a treaty or in some solemn instrument to record our common determination."

Then, answering a criticism that the conclusion of the treaty of 1870 would invalidate that of 1839, Lord Granville said: "There is one objection which I believe is entirely without foundation—namely, that the very fact of the treaty which we propose being entered into, will in the slightest degree impair the obligations of the treaty of 1839. Those obligations we have expressly reserved in the words of this treaty."[45] That Prussia and the allied German States considered themselves bound by the treaty of 1839 is proved from a communication made by Prince Bismarck to the British Government. Referring to that communication Lord Granville said: "On the morning of that day (the 5th of August, 1870) Count Bernstorf (the Prussian Minister at London) told me he had received a message from Count Bismarck that he should be ready to concur in any measure which would strengthen the neutrality of Belgium."[46] While the Lords were listening to Lord Granville's speech, the Commons were addressed by Mr. Gladstone on the same subject. Mr. Gladstone, after referring to the proposition made to France and Prussia to sign a new treaty for the maintenance of the neutrality of Belgium during the war then going on between these two countries, and also to the readiness of Great Britain to join either belligerent in case the other should attempt to march its troops across Bel-

[45] Hansard, vol. 203, p. 1675.
[46] Hansard, vol. 203, p. 1675.

gium, explained to the House that after the war the contracting parties would fall back upon the obligations of the treaty of 1839. This shows clearly that the British Government had not concluded the treaties of 1870, because that of 1839 was obsolete, as some of the apologists of Germany allege, but for other reasons, some of which were given out in the course of the Parliamentary debates. In fact one of the principal objections made to the conclusion of the treaties of 1870 was the existence of the treaty of 1839. Mr. Disraeli (later Lord Beaconsfield) voicing the opinion of the opposition said in the House of Commons, in answer to Mr. Gladstone's explanations, that although he approved the policy of the Government in defending the neutrality of Belgium, which he called "a wise and spirited policy" and in his opinion, "not the less wise because it was spirited," he expressed his doubt as to the wisdom of concluding a new treaty of guarantee in view of the existence of that of 1839. Then the future Prime Minister of Great Britain, referring in a general way to the policy of England and the interest the country had in the Belgian coast, said "the policy of England ought certainly not to be a merely European policy. She has an ocean Empire, and an Asiatic Empire. But she has a great interest in the prosperity, the peace, and the independence of the various states of Europe. Viewing it from a very limited point of view, it is of the highest importance to this country that the whole coast from Ostend to the North Sea should be in the possession of free and flourishing communities, from whose ambition the liberty and independence of England nor of any country can be menaced. We find that of Europe at present constituted in such a manner, and it is well such a position of affairs should be maintained."[47]

Mr. Gladstone's answer to the mild criticism of his distinguished future opponent was clear and concise, and it may not be amiss to quote it verbatim: "The right honorable Gentleman (Mr. Disraeli) said that as a general rule he would rather trust to treaties which at present exist than cumulate them by other engagements. That observation reminded me that I might have pointed out more clearly what we thought was the necessity for this proposed treaty. When the war broke out, we naturally looked to the declaration of the belligerents as to the neutrality of Belgium, and we were obliged to admit * * * that those declarations contained everything that could reasonably have been expected from each Power speaking singly for itself; but, notwithstanding that, there was this weakness about them. In the event of the violation of the neutrality of Belgium by

[47] Hansard, vol. 203, pp. 1702-1704.

Prussia, France held herself released, and in the event of the violation of neutrality by France, Prussia held herself released. I think we had no right to complain of either Power. I think they said everything they could have expected to say; but we thought that by contracting a joint engagement we might remove the difficulty and prevent Belgium from being sacrificed, and render it extremely unlikely that anything would arise to compromise our neutrality. That was our reason for thinking a treaty of this kind necessary, because it is obvious that the treaty of 1839, whatever value it may possess, could hardly be supposed to meet the circumstances of the present case with reference to the declarations made by the belligerent Powers."[48]

On August 9, the treaties of 1870 were concluded and on the next day, on the prorogation of Parliament, the Queen's speech referring

[48] Hansard, vol. 203, p. 1705.

Mr. John Bright, then a member of the cabinet, disagreed with his colleagues on the Belgian question, being generally opposed to intervention on the continent. Speaking next day in the House on this subject, he said, "I protest against Quixotic expeditions, involving this country in difficulties from which it was difficult to escape * * * I do not believe I should live to see the day when any Prime Minister who was at once remarkable for intelligence and conscience would, under any pretext, do anything that would involve the country in a Continental war." Hansard, ib. p. 1740. Mr. Bright's prediction was true because he did not live to see the present great war.

During the negotiations for the conclusion of the treaties of 1870, Mr. Gladstone, writing to Mr. Bright on August 1, said, "Although some members of the cabinet were inclined on the outbreak of this most miserable war (of 1870) to make military preparation, others, Lord Granville and I among them, by no means shared that disposition, nor, do I think, the feeling of Parliament was that way inclined. But the publication of the treaty has altered all this, (meaning the projected agreement between France and Prussia for the incorporation of Belgium to the former country as above explained) and has thrown upon us the necessity either of doing something fresh to secure Belgium, or else of saying that under no circumstances would we take any step to secure her from absorption. This publication has wholly altered the feeling of the House of Commons, and no government could at this moment venture to give utterance to such an intention about Belgium. But neither do we think it would be right, even if it were safe, to announce that we would in any case stand by with folded arms, and see actions done which would amount to a total extinction of public right in Europe." Life of Wm. E. Gladstone, by John Morley, vol. II, p. 341.

Mr. Gladstone rightly predicted that his country would not stand with folded arms if the neutrality of Belgium was violated. Writing again on the 4th of August to the same friend, he emphasized his point of view by stronger language. "The recommendation set up in opposition to it (to the conclusion of the treaties of 1870) generally is that we should simply declare we will defend the neutrality of Belgium by arms in case it should be attacked. Now the sole or single-handed defense of Belgium would be an enterprise which we incline to think Quixotic. * * * If the Belgian people desire, on their account, to join France, or any other country, I for one, will be no party to taking up arms to prevent it. But that the Belgians, whether they would or not, should go 'plump' down the maw of another country to satisfy dynastic greed, is another matter. The accomplishment of such a crime as this implies, would come near to an extinction of public right in Europe, I do not think we could look on while the sacrifice of freedom and independence was in course of consummation." Morley, ib. p. 342.

to the successful termination of the negotiations said that the object of the agreements was "to give additional security to Belgium against the hazards of war waged upon her frontiers."[49] It is during that day, namely, the 10th of August, that some very animated debates took place on the subject in both Houses of Parliament, and particularly in the Lower House, when again Mr. Gladstone towered above the other commoners as an orator, dialectician and statesman.

In the Upper House, as some members of the opposition thought that the conclusion of the treaty of 1870 was uncalled for and unnecessary, and were expressing their surprise as to the absence from the latter instrument of the signatures of all the contracting parties of that of 1839, Lord Granville, answering both criticisms, observed that the conclusion of these compacts (namely, those of 1870) was necessary and that they did not in the slightest degree weaken the effect of the treaty of 1839; then referring to the abstention of the other Powers from acceding to the new instruments, he said, "there was a disinclination on the part of Russia to accede to this proposal; because Russia considers and says that the original treaty binds them and that they wish to have an understanding of a much wider description." Then, alluding to the construction given by the previous Government to the instrument of 1867 guaranteeing the neutrality of Luxemburg, he added, "we are not now in a position like that described by a conservative Government, when we joined in a treaty guaranteeing Luxemburg, and when, almost before the ink with which it was signed was dry, the Prime Minister and the Foreign Minister of this country announced, to the surprise of France and the indignation of Prussia, that we had signed it as a collective guarantee, and that as the co-operation of the other Powers was the only case in which the guarantee could possibly be brought into question, England had brought itself under no new obligation at all. I admit that there is this disadvantage about the present engagement, that if the contingency should arrive—which God forbid —we should be obliged to act upon our engagements."[50]

In the House of Commons the opposition again criticised the Government for concluding a new treaty, instead of adhering to that of 1839, and contended that the refusal of the other Powers, parties to the latter instrument, to accede to the new treaty of 1870, proved that the latter was not only unnecessary, but also that by its conclusion that of 1839 became null and void.

[49] Hansard, vol. 203, p. 1766.

[50] Hansard, ib. vol. 203, p. 1754 et seq.

Mr. Gladstone, as spokesman of the Cabinet, made that day a remarkable speech in which he scrutinized the question of the neutrality of Belgium and the treaty obligations of Great Britain connected with it. As it is from some expressions contained in that speech that the apologists of Germany draw their principal argument as to the alleged obsolescence of the treaty of 1839, it may be of interest to produce his utterances in extenso.

Mr. Gladstone, in answer to the reproach made to the Government for destroying the validity, as it was alleged, of the old treaty through the conclusion of the new one, said: "As far as I understood, my honorable and gallant friend * * * has complained that we have destroyed the treaty of 1839 by this instrument (the treaty of 1870) * * * I find that by one of the articles contained in it the treaty of 1839 is expressly recognized."

Later on in the course of the discussion, answering a similar criticism from the part of another member, he answered: "It is said that the treaty of 1839 would have sufficed, and we ought to have announced our determination to abide by it * * * In what then lies the difference between the two treaties? It is in this—that, in accordance with our obligations, we should have had to act under the treaty of 1839 without any stipulated assurance of being supported from any quarter whatever." What Mr. Gladstone meant here was the stipulation in the treaties of 1870 by which France and Prussia were under the obligation to side with Great Britain if either of them, then at war, should violate the neutrality of Belgium.

"The treaty of 1839," continued Mr. Gladstone, "loses nothing of its force even during the existence of this present treaty (that of 1870). The treaty of 1839 includes terms which are expressly included in the present instrument, lest by any chance it should be said that, in consequence of the existence of this instrument, it had been injured or impaired. That would have been a mere opinion, but it is an opinion which we thought fit to provide against, any combination, however formidable, whereas by the treaty now formally before Parliament we secure powerful support in the event of our having to act—a support with respect to which we may well say that it brings the object in view within the sphere of the practicable and attainable, instead of leaving it within the sphere of what might have been desirable, but which might have been most difficult, under all the circumstances, to have realized. The honorable member says that by entering into this engagement we have destroyed the treaty of 1839. But if he carefully considers the terms of this instrument he will see that there is nothing in them calculated to

bear out that statement. It is perfectly true that this is a cumulative treaty, added to the treaty of 1839."[51]

In the course of his speech Mr. Gladstone disapproved the apprehension of some members of the House that the absorption of Belgium by its powerful neighbors, namely France or Prussia, would be the death-knell of Great Britain. "My honorable and gallant friend," answered Mr. Gladstone, "says that if Belgium were in the hands of a hostile Power, the liberties of this country would not be worth twenty-four hours' purchase. I protest against that statement. * * * a statement more exaggerated I never heard fall from the lips of any member in this House."[52]

Then referring to the motives which actuated England to extend her protection to Belgium, Mr. Gladstone said: "What is our interest in maintaining the neutrality of Belgium? It is the same as that of every great Power in Europe. It is contrary to the interests of Europe that there should be unmeasured aggrandizement * * * What is the moral effect of those exaggerated statements of the separate interest of England? The immediate moral effect of them is this, that every effort we make on behalf of Belgium on other grounds than those of interest, as well as on grounds of interest, goes forth to the world as a separate and selfish scheme of ours; and that which we believe to be entitled to the dignity and credit of an effort on behalf of a general peace, stability, and interest of Europe actually contracts a taint of selfishness in the eyes of other nations because of the manner in which the subject of Belgian neutrality is too frequently treated in the House. If I may be allowed to speak of the motives which have actuated Her Majesty's Government in the matter, I would say that while we have recognized the interest of England, we never looked upon it as the sole motive, or even as the greatest of those considerations which have urged forward * * * But there is one other motive which I shall place at the head of all, that attaches peculiarly to the preservation of the independence of Belgium. What is that country? It is a country containing four or five millions of people, with much historic past, and imbued with a sentiment of nationality and a spirit of independence as warm and as genuine as that which beats in the hearts of the proudest and most powerful nations." The Prime Minister after bestowing further eulogy on the people of that country, said that its conquest by any other Power would be a violation of public law. "By the regulation of its internal concerns," continued Mr.

[51] Hansard, ib. vol. 203, p. 1789.

[52] It seems that this statement was first made by Napoleon I.

Gladstone, "amid the shocks of revolution, Belgium, through all the crises of the age, has set to Europe an example of a good and stable government gracefully associated with the widest possible extension of liberty of the people. Looking at a country such as that, is there any man who hears me who does not feel that if, in order to satisfy a greedy appetite for aggrandizement, coming whence it may, Belgium were absorbed, the day that witnessed that absorption would hear the death-knell of public right and public law of Europe." Then giving a wider scope to his thought, he continued: "But we have an interest in the independence of Belgium which is wider than that which we may have in the literal operation of the guarantee. It is found in the answer to the question, whether under the circumstances of the case, this country, endowed as it is with influence and power, would quietly stand by and witness the perpetration of the direst crime that ever stained the pages of history in the darkest ages, and thus become participators of the sin."

Mr. Gladstone then tried to impress upon the House his point of view that Great Britain was not, under all circumstances, bound to go to the length of resorting to forcible means for the defense of Belgium if her independence and neutrality was violated. "There is, I admit," he said, "the obligation of the treaty. It is not necessary, nor would time permit me, to enter into the complicated question of the nature of the obligations of that treaty; but I am not able to subscribe to the doctrine of those who have held in this House, what plainly amounts to an assertion that the simple fact of the existence of a guarantee is binding on every party to it irrespectively altogether of the particular position in which it may find itself at the time when the occasion for acting on the guarantee arises. The great authorities upon foreign policy to whom I have been accustomed to listen, such as Lord Aberdeen and Lord Palmerston, never to my knowledge took that rigid and, if I may venture to say so, that impracticable view of a guarantee. The circumstance that there is already an existing guarantee in force is of necessity an important fact, and a weighty element in the case, to which we are bound to give full and ample consideration."[53]

It is upon this last passage, already famous, of Mr. Gladstone's speech, that the apologists of Germany rely to justify the Kaiser

[53] Sir Henry Bulwer-Lytton, speaking that day in a humorous manner said, "I am glad, Sir, to see the right honorable gentlemen, the member for Buckinghamshire (Mr. Disraeli) in his place, for I think that opposition is the salt of politics, and that any speech of my right honorable friend at the head of the government (Mr. Gladstone) has always some flavor when seasoned by a speech from my right honorable friend opposite (Mr. Disraeli)." Hansard, vol. 203, p. 203 et seq.

for marching with his army across the Belgian territory against the consent of the government of the latter country, and of making Belgium one of the belligerents of this great war, with all the dire consequences to the brave people of this small but highly civilized state.

In their eagerness to prove the justice of their cause, these apologists overlook the fact that Mr. Gladstone was referring all the time, in his speech, to the duty incumbing upon Great Britain to defend Belgium and not to the right to attack her. What the then Prime Minister of England meant was that in cases of guarantee of the territory of a state it was questionable whether at a given moment the guarantor was bound at all costs to run to the assistance of the guaranteed state. In fact there may be moments when a state may not be in a position to assist a nation whose independence and territorial integrity she may have guaranteed by treaty. That undoubtedly was the paramount thought of Mr. Gladstone when he made the above assertion, which has been so erroneously construed by the friends of Germany; but, it should be admitted, not by the German government. The defenders of the German cause interpret that passage as meaning evidently not only that the German government was not bound to defend the neutral attitude of Belgium, but also to attack her and make that country the theatre of vast military operations. Such a construction attributed to the great British statesman is an insult to his memory and a travesty of truth.[54]

The guarantee of the neutrality of Belgium came up for discussion again incidentally when on April 12, 1872, the question of intervention in foreign countries was discussed in the House of Commons. As some members of the House had expressed their doubt as to the wisdom of Great Britain's entering into treaties of guarantee, Mr. Gladstone, who still was at the head of the Government, explained to the House the limit of the responsibility placed upon England from such obligations.

"My honorable friend (Sir Wilfred Lawson) appears to be of opinion," said Mr. Gladstone, "that every guarantee embodied in a treaty is in the nature of an absolute, unconditional engagement, binding this country under all circumstances, to go to war for the maintenance of the state of things guaranteed in the treaty, irrespective of the circumstances of the country itself, irrespective of the causes by which that war may have been brought about, irrespective of the conduct of the Power on whose behalf the guarantee

[54] That such was his view, is proved by a speech he made subsequently on treaty obligations, as we shall hereafter see.

may have been invoked and which may itself have been the cause of the war, and irrespective of those entire changes and circumstances and relations which the course of time frequently introduces, and which cannot be overlooked in the construction of these engagements. I have often heard Lord Palmerston give his opinion of guarantees both in this House and elsewhere, and it was a familiar phrase of his, which, I think, others must recollect as well as myself, that while a guarantee gave a right of interference it did not constitute of itself an obligation to interfere. Without adopting that principle as a rigid doctrine or theory applicable to this subject—on which it is very difficult, and perhaps, not very convenient to frame an absolute rule—yet I think there is very great force in Lord Palmerston's observation." Mr. Gladstone then referred to the treaties of 1870 for the guarantee of Belgian neutrality and explained the reasons which induced the government to conclude them. It might be interesting,—although, in some way, it is a repetition of his previous opinions,—to quote part of his speech dealing with the question. "In 1870," he said, "while we had a guarantee of a general character already upon record, we proceeded to make a most stringent guarantee for the defense of Belgium against the dangers into which it appeared to have been brought, not only by the war which had just then broken out, but likewise by certain circumstances anterior to that war. But why was it that this stringent guarantee of 1870 was entered into? It was not because of the guarantee contained in the treaty of 1839. That treaty would have stood where it was but for the new circumstances that occurred, and for the universal feeling and sentiment of the country with regard to those circumstances. It is not possible, I think, to contend from the nature of these general guarantees, that they are such as to exclude a just consideration of the circumstances of the time at which they may be supposed to be capable of being carried into effect. I believe that consideration of circumstances will always have a determining influence not only without derogation to good faith, but in perfect consistency with the principles of good faith, upon the practical course to be pursued."

Mr. Gladstone concluded his speech by making a statement as to what the British policy ought to be on exceptional occasions and laid down some principles of a general character which may not be amiss to quote as having a connection on the points then at issue. "We cannot," said the Prime Minister, "undertake to register a positive and absolute vow, by which we are to be restrained from recognizing any duty beyond our island barrier. The people of this

country would not consent to record such a vow, and I am bound to say that if they did, they would never keep it; for in great occasions, partly from considerations of danger, which, though remote, might become proximate, partly from considerations of honor, partly from sentiments of sympathy, partly from the sense of an interest, not narrow or selfish but wide and honorable, in the maintenance of general peace, they would think, without any disposition to a meddlesome policy, that there might be occasions when it would be their duty to look beyond what immediately and absolutely concerned themselves, to the general interest of the civilized world. To an abstract proposition of this kind we cannot be parties. The past errors of this country, moreover, have not lain on the side of refraining from war, but on the side of needlessly rushing into it. Cautions, therefore, we ought to accept; but though they are likely to be useful warnings against the indulgence of a besetting sin; we cannot agree entirely to foreswear brotherhood with other nations with respect to any dangers except those which menace an absolute invasion of our territory."[55]

That Mr. Gladstone was as scrupulous as the present British ministers in upholding the sanctity of treaties is proved also by his views expressed in the anonymous article he contributed to the Edinburg Review in January, 1871. Referring then to the projected violation of the neutrality of Luxemburg by Prussia: "With a great inconsistency," he wrote, "Count Bismarck is signing treaties with one hand, whilst he is tearing them with the other." Then speaking on the duty of a state to keep its treaty engagements, he said: "With the destruction of good faith and honor between man and man, between nation and nation, everything else that is worth living for comes in its turn to be destroyed. * * * Whatever else may betide, the policy of England stands firm on this immovable basis, that treaties, when made, must be respected. No Government which is to exist in this country can abandon those principles: no Government can flinch from the active defense of them. * * * Meanwhile it imposes on us the duty of cautiously abstaining from entering into any fresh engagement whatever with states devoid of political principles and the no less imperative duty of maintaining the positive engagements we have already contracted with the strength and energy of the Empire." That is exactly what Great Britain is now doing.[56]

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[55] Hansard, vol 210, p. 1176 et seq.

[56] The guiding doctrine of both political parties in England with respect to international obligations, has been in favor of their maintenance. Thus, the late Lord Salisbury, then Prime Minister, speaking at Albert Hall on May 6, 1899, and referring to treaty obligations, said, "But it is necessary in human affairs, to make engagements and con-

Most of the writers who have treated the Belgian question dwelt exclusively on the violation by Germany of the treaty of 1839,—to which Prussia was a contracting party—and touched only incidentally the very important point of the violation of the neutrality of Belgium, independently of that instrument. Assuming for the sake of argument that the treaty of 1839 is obsolete, and there was therefore no obligation imposed upon any Power to protect Belgium, does it then follow that any of the present belligerents had the right to send their troops across the Belgian territory in order to attack their enemy and generally to make that country the basis of their warlike operations? Many persons have overlooked the fact that independently of any treaty or guarantee, independently of the Hague Convention, Belgium, as a non-belligerent state, was entitled to all the rights enjoyed by every Power which does not participate in a war. Nor have these rights been created by the treaty of 1839 or by the Hague Convention on the rights of neutrals. The principle that the territory of a non-belligerent state should be respected by belligerents is very old and well known; and it is equally well known that unless such neutral state consents to grant free passage to the troops of either belligerent—in which case she might be considered as taking part in the war—none of them has the right to force a passage for her troops across such neutral territory.

It is claimed by the friends of Germany that had Belgium granted a free passage to the Kaiser's troops, she would have been treated in the same way as the Grand Duchy of Luxemburg and would have obtained compensation for any damages suffered by her people. Leaving aside all moral considerations and the self-respect that every

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tracts with your neighbor, and it is highly necessary when you have made them to keep them, otherwise when you propose to make them again nobody will trust you. * * * I do not of course mean to deal with international obligations in a pedantic spirit or to deny they are subject to modifications in consequence of the necessity of things which may not often happen in private affairs, but I maintain that the principle of acting upon treaties to which you have deliberately acceeded is a sacred principle and one which lies at the base of the civilization of the world, and to maintain that because of the action—let it be as bad as you will—of one particular holder of power you have a right to scatter your obligation to the wind, is to undermine the security on which your international relations repose. Look in any quarter of the world you please—in Europe, in America, in China, nay, above all in Africa—it is upon the faith of treaties they rely." London Times, May 7, 1889.

Viscount James Bryce in seconding the motion of the address in reply to the King's speech in the House of Commons on November 11, 1914, said: "We are fighting against the doctrine that treaties may be broken whenever it pleases a strong Power to do so, and against the doctrine that whatever is necessary becomes thereby permissible. * * * This is a conflict of the principles of good faith and justice against the principles of violence and of force—and in a conflict of principles there can be no end until one or the other principle triumphs." London Times, November 12, 1914.

state ought to have, and looking into the question merely from the practical point of view, one might ask what guarantee was there for Belgium that her territory would not have been used as the theatre of the war operations? Was there any certainty that Germany would have had such a sweeping victory that Belgium would have escaped the horrors of war? The facts prove the very contrary because the Belgian territory would have been invaded also by the allies in order to chase the enemy. Is there any certainty that the territory of Luxemburg will escape destruction if the allies repulse the German Army and chase it across the territory of that country? The offer of compensation therefore in such a case cannot create a right, and all the arguments of the world cannot convince impartial observers that such offer made by the German Government to Belgium, could have justified the invasion of the Belgian territory by the Kaiser's troops with all the terrible consequences that followed.

But if Belgium was guilty of acts justifying the invasion of her territory, how can the Kaiser and his Ministers justify the invasion of the Grand Duchy of Luxemburg, whose government was not accused of any act justifying such an invasion, even according to the German Government's standard of justice? The verdict of the world, in both cases, will always be that Germany disregarded all treaty engagements and trampled under foot all the principles and usages of the law of nations, which have been so eloquently explained by her own brilliant writers. Suffice it to mention only the opinion of one of her most distinguished authors on International Law, who referring to the guarantee of the neutrality of Belgium, says, that "the States which have guaranteed the neutrality of Belgium and would not defend her against an aggressor, would not be considered as having kept their engagements and would be rendered guilty of a violation of law."[57]

In concluding this cursory review of the controverted questions of the violation of treaties and generally of the rights of neutral states, it may not be amiss to comment briefly on the theory propounded by a former Colonial Secretary of Germany, who, in his eagerness to defend the policy of his country, wrote that a state is not morally bound to respect her treaty obligation, "involving either a sacrifice of its own existence or an abdication of its sovereign function."[58]

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[57] Bluntschli, Le Droit International Codifié, art. 440.

[58] Dr. Bernhard Dernburg, North American Review, December, 1914. Also New York Sun, December 6, 1914.

In support of his view he quotes the above referred passage from Mr. Gladstone's speech, already famous, and a decision of the Supreme Court of the United States on a Chinese Exclusion case.[59]

That Mr. Gladstone's utterances have no bearing on the question at issue, has been already shown and it is needless to revert to them.

That the *dictum*—and such it was—of the Supreme Court had in view an entirely different question having no connection whatever with the abstract doctrine of Dr. Dernburg, will be seen from the extracts from the very decision quoted by him. But before doing that it might be necessary to explain shortly the principle of International Law governing this point, of which Dr. Dernburg gives us only a glimpse.

Leaving out of discussion the treaties called transitory or of disposition, such as those recognizing the independence of a state, the cession of territory, and the like compacts, which are of a permanent character and may only be altered by a new treaty, concluded either voluntarily or involuntarily, there remain two other kinds of instruments: namely, treaties proper, such as those of commerce and navigation and of similar character, which may have been concluded for a certain period or no time may have been fixed for their duration; and treaties concluded specifically for a contingency of war between the contracting or other parties. The latter comprise the Declaration of St. Petersburg, the Geneva and Hague Conventions, or at least the stipulations which would take effect in case of war, and other instruments of that character. Now treaties guaranteeing the neutrality of a state are concluded for the express contingency of war and may be, therefore, included in the last category. It might be useless to enter into the discussion of the question as to whether treaties proper may be denounced without the consent of both parties, because the instruments guaranteeing the neutrality of a state do not belong to that class. Suffice it only to say, that in principle, the great majority of writers admit that a change of circumstances not foreseen at the time of the conclusion of such a treaty, may, in certain cases, justify a nation to denounce such a contractual obligation, provided a suitable indemnification is offered to the other contracting party, in case such state suffers any injury. But in all these cases a previous examination of the facts and circumstances is essential, and it would be wrong to apply beforehand an abstract rule. Each case should be dealt with in accordance with the actual situation.[60]

[59] Chae Chan Ping v. United States, 130 U. S. 581.

[60] See article by the present writer under the title "The Sanctity of Treaties," in Yale Law Journal, February, 1911, in which the views of the principal authorities on international law are given.

Now the treaty of 1839 was concluded, as above explained, for the express contingency of war. It had to take effect only in case of war between the present or other belligerents, endangering the independence and neutrality of Belgium. It would therefore be unreasonable, if not grotesque, to maintain that a compact of that nature, which has been solemnly entered into for that particular contingency, can be abrogated by one of the principal contracting parties. On the other hand it is a paradox to assert (as Dr. Dernburg does), that " by way of consolation she (Germany) was offered a scrap of paper and invited to accept the interpretation placed upon it by the Powers leagued against her," for the simple reason that no question of the construction of the clauses of that treaty arose between the contracting parties, except in the writings of the apologists of the Kaiser's Government. On the contrary, as above stated, up to the declaration of the present war, official Germany considered herself as being bound by the stipulations of the treaty of 1839.

Official declarations as to the validity of the treaty of 1839 from the part of Germany are not lacking. Thus, in the course of the sitting of the Budget Committee of the Reichstag on April 29, 1914, Herr von Jagow, Secretary of State for Foreign Affairs, said that the neutrality of Belgium was determined by international conventions and that Germany was resolved to respect these conventions.[61]

This was affirmed by Herr von Heeringen, Minister of War, when he also declared in the Reichstag that Germany would not lose sight of the fact that Belgian neutrality was guaranteed by international treaties.[61]

It may also be pertinent to mention the fact that Germany, or rather Prussia on behalf of the other German states, was party to the Conference of London of 1871,—which was held on account of the abrogation by the Czar of Russia of certain clauses of the Treaty of Paris of 1856,—when the rule was laid down in a Declaration that "it is an essential principle of the law of nations that no Power can liberate itself from the engagements of a treaty, nor modify the stipulations thereof, unless with the consent of the Contracting Powers by means of an amicable arrangement."[62]

Now coming to the opinion of the Supreme Court of the United States in the Chinese Exclusion case, above referred to, which is used by Dr. Dernburg as supporting his own theory of the right of states to abrogate *ex parte* their treaties, and particularly that of

[61] Gray Paper of Belgium, inclosure in no. 12.
[62] Herstlet, Map of Europe by Treaty, vol. III, p. 433.

1839, let us see what were the facts in that case, and what the highest court of the land decided.

In 1887 a subject of China, residing up to that time at San Francisco, went back to his country with the intention of returning to the United States, having been furnished with the required certificate by the authorities. During his absence Congress passed an Act by which subjects of the Celestial Empire, who returned to China, could not be allowed to land in this country. The provisions of that Act were evidently contrary to the stipulations of previous treaties concluded between the United States and China. Consequently there was a conflict between a treaty and an Act of Congress, which was not without precedent. The question to be decided by the Supreme Court was which of these two expressions of the Legislature —since treaties are concluded with "the advice and consent" of the Senate—shall be binding upon the country. The court had to deal with a particular question submitted to its decision, nor was it for the first time that it had to pass upon two conflicting acts of another department of the Government. On previous occasions it had already decided that an Act of Congress passed subsequent to a treaty should prevail, because that was the last expression of the sovereign will, and that it was not for the judicial but for the other departments of the Government to be concerned with the consequences resulting from the abrogation of a treaty. Such was also the ruling in this particular case[63] from which the official apologist of Germany quotes a *dictum* in support of his theory.

Mr. Justice Field, in delivering the opinion of the Court in that case said, among other things, that the validity of the Act (excluding Chinese from the United States, even if they were former residents) was assailed as being in effect an expulsion from the country of Chinese laborers, in violation of existing treaties between the United States and the Government of China, and of rights vested in them under the laws of Congress. "It must be conceded," said the court, "that the Act of 1886 is in contravention of express stipulations of the treaty of 1868 and of the supplementary treaty of 1880, but it is not on that account invalid or to be restricted in its enforcement. The treaties were of no greater value than the Act of Congress. By the Constitution, laws made in pursuance thereof and treaties made under the authority of the United States are both declared to be the supreme law of the land, and no paramount authority given to the one over the other. A treaty, it is true, is in its

[63] Chae Chan Ping v. United States, 130 U. S. 581.

nature a contract between nations and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future repeal or amendment. If the treaty operates by its own force, and relates to a subject within the power of Congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of Congress. In either case the last expression of the sovereign will must control."

The passage upon which Dr. Dernburg relies, and alleges that it strengthens his theory of the right of his country to disregard the treaty of 1839, is as follows: "It will not be presumed that the legislative department of the Government will lightly pass laws which are in conflict with the treaties of the country; but that circumstances may arise which would not only justify the Government in disregarding their stipulations, but demand in the interest of the country that it should do so, there can be no question. Unexpected events may call for a change in the policy of the country." But the court did not stop there but indicated the course which may be taken by the other contracting party, as follows:

"Neglect or violation of stipulations on the part of the other contracting party may require corresponding action on our part. When a reciprocal engagement is not carried out by one of the contracting parties, the other may also decline to keep the corresponding engagement. * * * And further, the question whether our government is justified in disregarding its engagements with another nation is not one for the determination of the courts."

After endorsing the opinion of Mr. Justice Curtis that the power to refuse the execution of a treaty was a prerogative "which no nation could be deprived of without affecting its independence,"[64] the court added, that "if the power mentioned is vested in Congress, any reflection upon its motives, or the motives of any of its members in exercising it, would be entirely uncalled for. The Court is not a censor of the morals of other departments of the Government; it is not invested with any authority to pass judgment upon the motives of their conduct." Then coming to the point at issue, the court said, "That the Government of the United States, through the action of the legislative department, can exclude aliens from its territory, is a proposition which we do not think open to controversy. Jurisdiction over its own territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part

[64] Taylor v. Morton, 2 Curtis 454-459.

of its independence. If it could not exclude aliens it would be to that extent subject to the control of another power. * * * If * * * the government of the United States, through its legislative departments, considers the presence of foreigners of a different race in this country, who will not assimilate with us, to be dangerous to its peace and security, their exclusion is not to be stayed because at the time there are no actual hostilities with the nation of which the foreigners are subject. The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity, in a less pressing degree, may arise when war does not exist and the same authority which adjudges the necessity in one case must also determine it in the other. In both cases its determination is conclusive upon the judiciary. If the government of the country of which the foreigners excluded are subjects, is dissatisfied with the action, it can make complaint to the executive head of our Government, or resort to any other measure which, in its judgment, its interest or dignity may demand, and there lies its only remedy. * * * But far different is this case, where a continued suspension of the exercise of a governmental power is insisted upon as a right, because, by the favor and consent of the Government, it has not heretofore been exerted with respect to the appellant or to the class to which he belongs. Between property rights not affected by the termination or abrogation of a treaty, and expectations of benefits from the continuance of existing legislation, there is as wide a difference as between realization and hope."

It is clear from the above extracts that the Supreme Court of the United States adjudged a question affecting the laws and Constitution of the United States and was not concerned with the consequences of the action of the Executive or of the Legislative Department of the Government. It was passing upon a legal question, on a matter of internal policy, and was not considering, and could not consider, how and in what manner the Government would justify itself towards a foreign Power whose treaty was abrogated by an Act of Congress. The Court had to deal with a concrete question, and was not propounding an abstract doctrine. It had to decide, as on former occasions, whether an Act of Congress would prevail over a previously concluded treaty. From an abstract dictum of a Court to conclude that a state may throw to the winds any treaty, particularly an instrument which has been concluded for the very contingency which arose at the time of its violation, is a thesis which cannot possibly meet with the approval of public opinion in this or any other neutral country.

But all the justifications and excuses for the violation of a solemn treaty and the trampling underfoot of the general principles and usages of the law of nations in regard to non-belligerent states—be they official or semi-official, are mere verbiage—the bare truth being the eagerness of Germany to invade France through the easiest way and with the least possible injury and danger to her army. The memorable interview of the British Ambassador at Berlin, both with the Imperial Chancellor and with the Secretary of State for Foreign Affairs, gives the clue to the situation. When Sir E. Goschen asked Herr von Jagow "whether the Imperial Government would refrain from violating Belgian neutrality," the latter replied, "that he was sorry to say that his answer must be No." * * * The reasons given for the violation of Belgian neutrality, were in the words of the German Secretary of State, "that they had to advance into France by the quickest and easiest way, so as to get well ahead with their operations and endeavor to strike some decisive blow as early as possible. That it was a matter of life and death for them, as if they had gone by the more southern route they could not have hoped, in view of the paucity of roads and strength of the fortresses, to have got through without formidable opposition entailing great loss of time; that this loss of time would have meant time gained by the Russians for bringing up their troops to the German frontier." And that in fine, "rapidity of action was the great German asset, while that of Russia was an inexhaustible supply of troops."[65]

There can certainly not be plainer language than this. When one connects it with the statement of the Imperial Chancellor, Bethmann Von Hollweg, in the Reichstag on Aug. 4, when he pronounced the memorable words that Germany was in a state of necessity and that necessity knew no law, and made the admission that the violation of the neutrality of Belgium was contrary to the dictates of international law, we need not go any further in order to discover the real motives of the unlawful action of the German government.[66]

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[65] Great Britain White Paper no. 160.

[66] Frederick the Great, the ancestor of the present Kaiser of Germany does not seem to have had much faith in treaties of guarantee. "All the guarantees," he wrote at one time, "are like the work of a filigree more apt to please the eyes than of any utility. (Quoted by Geffcken in Holtzendorf's Handbuch des Völkerrecht, vol. III, p. 107. See Frederick, Historie de mon Temps I ch. IX quoted by P. Fodéré, op. cit. II no. 1014. Also by A. Rivier op. cit. II p. 103.

Nor, it seems, did Prince Bismarck think otherwise. Lord Morley, the biographer of Mr. Gladstone, tells us that in 1865 the Dutch Minister in Vienna told the British Ambassador in that city, that in a conversation he (the Dutch Minister) had with Prince Bismarck (then Count Bismarck) the latter had given him to understand that without colonies Prussia could never become a great maritime nation, that he (Bis-

The facts speak for themselves.

Such in short are the historical facts and the controverted points connected with the neutrality of the Grand Duchy of Luxemburg and the Kingdom of Belgium. These states were placed under the *ægis,* so to say, of some of the leading Powers of Europe, their territory and independence were pledged as being beyond the sphere of war operations. Besides, these permanently neutralized small states, as members of the family of nations of the civilized world, were entitled to enjoy all the rights and privileges recognized for centuries for non-belligerent nations. But not only were these international usages considered as non-existent by Germany, but also rights which had been safeguarded by international compacts of a most solemn character; to violate them is, to use the words of a former Colonial Secretary of Germany,[67] "a wanton disregard of plighted faith justifying the expulsion of even the greatest Power from the community of civilization."

Both Luxemburg and Belgium are now under the heel of the conqueror, the one being too weak to defend itself, submitting reluctantly to the will of the invaders; the other, having attempted to resist, is reduced to misery and ruin.

We seem to be yet far from the day when brutal force shall be subservient to moral power and righteousness, and when the rules governing international relations shall be regulated by high principles of morality. For the moment, one is unfortunately bound to admit the "bankruptcy of International law," and to confess that what was said over two thousand years ago by a Greek historian, that "there is no right stronger than the arms," and that "whoever is strong, is considered as always speaking right and acting right,"[68] is still the dominant feature of the century in international relations.

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marck) had coveted Holland less for her own sake, than for her colonies, and that when he (Bismarck) was reminded that Belgium was guaranteed by the European Powers, Bismarck replied that "a guarantee was in these days of little value." John Morley, Life of Wm. E. Gladstone, vol. II. p. 320.

The late F. Crispi, Premier of Italy, told of an interview he had with Prince Bismarck in the course of one of his visits to Berlin; the German Chancellor referring to Belgium, said, "Belgium cannot but render us one service, whether she wishes it or not; that is to permit the passage through her territory of a German army. * * * If she has to undergo a territorial change, she will submit to it in agreement with us, under certain determined conditions which will only depend upon us." Quoted by Mme. Juliette Adam in Nouvelle Revue of October 1, 1888, reproduced in same of December 1, 1914.

[67] Dr. Bernhard Dernburg, in New York Sun, December 6, 1914.

[68] Thucydides.